

Remarks

Applicants have amended the claims to expedite prosecution of a preferred embodiment, namely, claim 62 has been amended to the method of treatment. Amendment is supported throughout the specification, and claims as originally filed. Accordingly, no new matter has been introduced by the amendment and its entry is respectfully requested.

Applicants have further cancelled the previously withdrawn claims directed to presently non-elected inventions. By cancelling these claims, Applicants do not intend to abandon or waive any rights to the cancelled embodiments. Applicants reserve the right to file continuing applications or take any other appropriate action to protect the subject matter of the cancelled claims.

Applicants now turn to the specific rejections.

The Examiner rejected claims 62-67 and 69-70 as allegedly not complying with 35 U.S.C. §112, first paragraph, enablement requirement. Specifically, the Examiner contended that the claims to prevention of HIV infection are not enabled.

While Applicants respectfully disagree, Applicants have amended the claims as described, *supra*. The Examiner specifically acknowledged that the specification is “enabling for a method of treating a viral infection with a formulation comprising CCR5-directed siRNAs.”

Accordingly, in view of the amendment, the rejection of claims 62-67 and 69-70 under 35 U.S.C. §112, first paragraph, has been rendered moot.

The Examiner rejected claims 62, 63, 67, 69, and 70 under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2004-0248296 to Beresford et al. (“Beresford”).

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

Applicants submit herewith a Declaration under 37 C.F.R. 1.131 (“Declaration”) signed by all the inventors showing that prior to the filing date of July 15, 2002, the Applicants had conceived and reduced to practice the claimed methods for treatment of HIV-1 by siRNA that specifically targets the CCR5 cell surface receptor.

Accordingly, in view of the Declaration, Applicants respectfully submit that the rejection of claims 62, 63, 67, 69, and 70 under 35 U.S.C. 102(e) over Beresford should be withdrawn.

The Examiner rejected claims 62, 63, 65, 67, 69, and 70 under 35 U.S.C. 103(a) as allegedly being unpatentable over Takaku et al. ("Takaku") and Novina et al. ("Novina").

Applicants respectfully disagree and submit that the rejection should be withdrawn for the following reasons.

As acknowledged by the Examiner, Takaku does not teach the use of siRNAs to treat or prevent HIV infection, nor do they specifically teach topical or intravaginal administration.

Pursuant to 35 U.S.C. § 102, a person shall be entitled to a patent unless the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent. Inventors Lieberman, Lee and Sharkar are co-authors of Novina, except that Novina additionally names Novina C.D., Murray M.F., Dykxhoorn D.M., Beresford, P.J., Riles, J., and Sharp, P.A. as authors. However, as set forth in the attached Declaration by Lieberman, Sharkar and Lee, Novina C.D., Murray M.F., Dykxhoorn D.M., Beresford, P.J., Riles, J., and Sharp, P.A. did not contribute to conception of the claimed invention. Since Novina C.D., Murray M.F., Dykxhoorn D.M., Beresford, P.J., Riles, J., and Sharp, P.A. did not invent the claimed invention, Novina does not constitute a publication by "others" nor prior art under 35 U.S.C. § 102.

As acknowledged by the Examiner, Takaku alone does not teach or suggest all the elements of the claimed invention.

In view of the above, Applicants respectfully submit that the rejection of claims 62, 63, 65, 67, 69, and 70 under 35 U.S.C. 103(a) over Takaku and Novina should be withdrawn.

In view of the foregoing, having overcome all the pending rejections, Applicants respectfully submit that all claims are in condition for allowance. Early and favorable action is requested.

In the event that any additional fees are required, the Commissioner is hereby is authorized to charge Nixon Peabody LLP deposit account No. 50-0850. Any overpayments should also be deposited to said account.

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Respectfully submitted,

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